

restore the property to the non-luxury standard adequate for the rental market for which the project was originally approved. If the standard has changed over time, the rehabilitation may include improvements to meet the current standards. The rehabilitation also may include the addition of significant features, in accordance with § 401.472. The result of the rehabilitation should be a project that can attract non-subsidized tenants, but competes on rent rather than on amenities. When a range of options exists for satisfying the rehabilitation standard, the PAE must choose the least costly option considering both capital and operating costs and taking into account the marketability of the property and the remaining useful life of all building systems. Nothing in this part exempts rehabilitation from the requirements of part 8 of this title concerning accessibility to persons with disabilities.

[72 FR 66038, Nov. 26, 2007]

§ 401.453 Reserves.

The Restructuring Plan must provide for reserves for capital replacement sufficient to ensure the property's long-term structural integrity so that the property can be maintained as affordable housing in decent, safe, and sanitary condition meeting the standards of § 401.558.

§ 401.460 Modification or refinancing of first mortgage.

(a) *Principal amount.* As part of the Restructuring Plan, the PAE will determine the size of the restructured first mortgage that will result from the modification or refinancing of the existing FHA-insured or HUD-held first mortgage. The restructured first mortgage must be in the amount that can be supported by net operating income based on the lower of the restructured section 8 rents or the rents allowed by the Use Agreement under § 401.408. Neither the outstanding principal balance of the existing first mortgage, nor the monthly principal and interest payments on that debt, may be increased through modification under the Restructuring Plan. The debt service coverage used by the PAE must be adequate for purposes of the Restructuring

Plan and for the requirements of any refinancing.

(b) *Fully amortizing.* The modified or refinanced first mortgage must be fully amortizing through level monthly payments.

(c) *Rates and other terms.* Interest rates and other terms of the modified or refinanced first mortgage must be competitive in the market.

(d) *Fees.* Any fees or costs associated with mortgage modification or refinancing determined by the PAE to be above normal processing fees must be paid by the owner from non-project funds and must not be included in the modified or refinanced first mortgage.

(e) *Refinancing.* (1) The owner must contact the mortgagee to determine the mortgagee's willingness to consider a modification and re-amortization of the existing first mortgage through a Restructuring Plan before considering any other source of first mortgage financing. If the mortgagee does not agree to modify and re-amortize in accordance with the Restructuring Plan, the loan must be refinanced.

(2) The refinancing may be either without credit enhancement or with credit enhancement under one of the following:

(i) *FHA mortgage insurance.* If the Restructuring Plan provides for FHA mortgage insurance for the refinanced first mortgage, the insurance will be provided in accordance with all usually applicable FHA legal requirements except that insurance will be documented as provided in section 517(b)(2) of MAHRA. HUD will issue the commitment for mortgage insurance but may adapt its procedures as necessary to facilitate development and implementation of a Restructuring Plan.

(ii) *Other FHA credit enhancement.* If FHA credit enhancement, including risk-sharing, is provided under part 266 of this title, the credit enhancement will be provided in accordance with all usually-applicable FHA legal requirements under part 266 of this title, except that special approval from HUD will be required before the PAE engages in risk-sharing with FHA under part 266 of this title. HUD will approve risk-sharing financing that complies with part 266 whenever required by section 517(b)(3) of MAHRA.